MONTANA LEGISLATIVE HISTORY

Chapter 235 1981

Bill H_____ S 83 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 6	✓ C	Hearing Date(s)	Jan 14	✓ C
	Mar 13	✓ C		Jan 15	✓ C
		____C			____C
		____C			____C
Date Out	Mar 13	✓ C		Jan 15	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

REFERRED TO COMMITTEE ON HIGHWAYS AND TRANSPORTATION: 1/8
HEARING: 1/20
REPORT: 1/20, DO PASS
2ND READING: 1/22, DO PASS
3RD READING: 1/24, YEAS: 46; NAYS: 0

TRANSMITTED TO HOUSE: 1/24
REFERRED TO COMMITTEE ON HIGHWAYS AND TRANSPORTATION: 1/26
HEARING: 2/5
REPORT: 2/5, BE CONCURRED IN
2ND READING: 2/13, ON MOTION, PASSED FOR THE DAY.
ON MOTION, 2/13, PASSED CONSIDERATION TO THE 46TH LEGISLATIVE DAY.
2ND READING: 3/2, YEAS: 81; NAYS: 11
3RD READING: 3/4, YEAS: 86; NAYS: 12

RETURNED TO SENATE: 3/4
TRANSMITTED TO GOVERNOR: 3/10/81
ACTION SIGNED: 3/11/81
CHAPTER 32

SB 81 -- TURNAGE -- EXEMPTING PEAT MINING FROM THE HARD-ROCK MINING ACT
INTRODUCED: 1-8
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 1-8
HEARING: 1/28
REPORT: 2/3, DO PASS AS AMENDED
2ND READING: 2/5, DO PASS AS AMENDED
3RD READING: 2/7, YEAS: 46; NAYS: 0

TRANSMITTED TO HOUSE: 2/7
REFERRED TO COMMITTEE ON NATURAL RESOURCES: 2/9
HEARING: 3/9
REPORT: BE CONCURRED IN, 3/13
2ND READING: 3/18 YEAS: 85; NAYS: 0

RETURNED TO SENATE

TRANSMITTED TO GOVERNOR: 3/26
ACTION: 3/31, VETOED

SB 81 -- ECK -- PROVIDING FOR AN AID TO DEPENDENT CHILDREN PROGRAM.
INTRODUCED: 1/8
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/8
HEARING: 1/13
REPORT: 1/20, DO NOT PASS YEAS: 37; NAYS: 12 -- KILLED

SB 82 -- ECK -- ALLOWING FOR CREDIT IN THE PUBLIC EMPLOYEES' AND TEACHERS' RETIREMENT SYSTEMS FOR SERVICE IN THE PUBLIC HEALTH SERVICE...
FISCAL NOTE: REQUIRED
INTRODUCED: 1/8
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/8
HEARING: 1/13
REPORT: 1/20, DO NOT PASS YEAS: 41; NAYS: 8 -- KILLED

SB 83 -- MAZUREK -- ESTABLISHING CRIME OF FAILURE TO RETURN RENTED PERSONAL PROPERTY
INTRODUCED: 1/9
REFERRED TO COMMITTEE ON JUDICIARY: 1/9
HEARING: 1/15

REPORT: 1/19, DO PASS AS AMENDED
2ND READING: 1/21, DO PASS
3RD READING: 1/24, YEAS: 46; NAYS: 0

TRANSMITTED TO HOUSE: 1/24
REFERRED TO COMMITTEE ON JUDICIARY: 1/24
HEARING: 3/4
REPORT: 3/4, BE CONCURRED IN, AS AMENDED
ON MOTION, 3/5, PASSED FOR THE DAY.
2ND READING: 3/6, YEAS: 44; NAYS: 40
ON MOTION, 3/7, REREFERRED TO COMMITTEE ON JUDICIARY
REPORT: 3/13, BE CONCURRED IN, AS AMENDED
2ND READING: 3/18, YEAS: 81; NAYS: 6
3RD READING: 3/20, YEAS: 86; NAYS: 7

RETURNED TO SENATE WITH AMENDMENTS: 3/20
2ND READING: 3/24, BE CONCURRED IN
3RD READING: 3/26, YEAS: 46; NAYS: 0

TRANSMITTED TO GOVERNOR: 3/30/81
ACTION: 4/2, SIGNED
CHAPTER 239

SB 84 -- R. BROWN -- AMENDING 3-5-602 TO INCREASE THE SALARY OF DISTRICT COURT REPORTS.
FISCAL NOTE: REQUIRED
INTRODUCED: 1/9
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/9
HEARING: 1/20
REPORT: 2/21, DO PASS AS AMENDED
2ND READING: 2/23, DO PASS
3RD READING: 2/25, YEAS: 47; NAYS: 2

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 3/2
HEARING: 3/14
REPORT: 3/27, BE CONCURRED IN
2ND READING: 3/28, YEAS: 61; NAYS: 15
3RD READING: 3/31, YEAS: 84; NAYS: 15

RETURNED TO SENATE: 3/31

TRANSMITTED TO GOVERNOR: 4/3/81
ACTION: 4/11, SIGNED
CHAPTER 316

SB 85 -- DOVER -- EXEMPTING NONPROFIT ORGANIZATIONS FROM RAFFLE RESTRICTIONS.
INTRODUCED: 1/9
REFERRED TO COMMITTEE ON TAXATION: 1/9
HEARING: 1/21
REPORT: 2/11, DO PASS AS AMENDED
2ND READING: 2/13, YEAS: 27; NAYS: 18
3RD READING: 2/16, YEAS: 32; NAYS: 8

TRANSMITTED TO HOUSE: 2/16
REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 2/17
HEARING: 3/4
REPORT: 3/9, BE CONCURRED IN, AS AMENDED
2ND READING: 3/9, YEAS: 73; NAYS: 0

Council, read from a sheet marked Exhibit F and attached to these minutes, in support of passage of this bill.

There were no opponents to the bill.

Senator S. Brown stated that unless there was some chance of winning the cases that would be filed as a result of passage of this bill, there would be little point in passing it.

Leo Barry, former Commissioner of State Lands, stated that the chances of winning are less than fifty-fifty, but that the state should take on the issue to perhaps prevent damaging precedent from being set.

Senator Mazurek raised the point that if the Attorney General forces a decision on jurisdiction by taking up such a case, and the case is lost, the state might be in the position of taking up losing battles in the future because of passage of this bill.

Senator S. Brown suggested that a more effective way to handle this matter than forcing a court battle might be to get concerned persons in on the bargaining and policy making prior to choosing such a corridor.

CONSIDERATION OF SENATE BILL 83:

AN ACT TO ESTABLISH THE CRIMINAL OFFENSE OF FAILURE TO RETURN RENTED OR LEASED PERSONAL PROPERTY; AND ESTABLISHING A PENALTY THEREFOR.

Senator Mazurek presented the bill at the request of the Montana Rental Association. He stated that present law does not enforce action against defaulted rentals because the original possession of the property is authorized, although the potential exists under theft of services provisions. This bill would create a new criminal offense -- failure to return rental property.

J. C. Weingartner, representing the Montana Rental Association, stated that the reason for passage of the measure would be that at present county attorneys cannot prosecute this type of case.

Senator Crippen said that he recognized the problem, but was concerned about the lack of protection for a lessee who might be accused under this provision. The language in Paragraph 2, Line 20, Page 1, seems to place the burden of proof on the defendant, relative to current address. He also took issue with the fact that there is no provision for a fine in lieu of a sentence.

Senator Mazurek said that should the bill pass this committee those matters would be dealt with. He also pointed out that since a certified letter to the defendant, asking him to return the rented property, was required before any court action could be taken, the defendant would have plenty of time to remedy the problem before it went to court. He also said that the term "not current" identification could be replaced with "false," for purposes of clarification.

Ernie Jacques, from A-1 Rental, Helena, pointed out that the attempt is being made only to bring the equipment back, not to trick people into committing a crime.

The meeting was adjourned at 11:48 a.m.

Mike Anderson

Senator Anderson
Chairman, Judiciary Committee

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 1/14/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

SENATE JUDICIARY COMMITTEE

BILLS SB 10
SB 89
SB 83

VISITORS' REGISTER

DATE 1/14/81

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
[illegible]	[illegible]	SB83	✓	
[illegible] Kenyon	M.D. Bd of Visitors	SB 10	✓	
Kelly Moore	" " " "	SB 10	—	
Karen Mikota	LW.V. of Mont	SB10	✓	
Charlene Boendorf	LWV of Mont			
Karen Strickler	LWV of MT			
[illegible] Coughlin	LWV of Mt. Tutum			
Allen Chronister	Atty. Gen.			
Tom Honzel	County Attorney			
Robert Melzaard				
[illegible] E. Sloan	Dept of Hlth.	SB10		
[illegible]	MAAA			
Steve Osherty	NPRC	SB89	✓	
Jan Brown	Mt Assn of Churches	SB 10	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

that the Committee Report not be filed on it until Senator Mazurek clears it with the secretary of this committee.

DISPOSITION OF SENATE BILL 76:

Following brief discussion of the bill, Senator Berg recommended DO NOT PASS. The vote was eight to two in favor of the motion.

DISPOSITION OF SENATE BILL 10:

Senator Anderson mentioned that Senator Stevens commented that four people had signed the minority report coming out of the Interim Committee handling this matter. Following discussion of the bill, Senator O'Hara recommended that it receive a DO NOT PASS vote, a motion which carried six to four.

DISPOSITION OF SENATE BILL 83:

Senator Mazurek moved to amend Section 1, paragraph 2, line 20, striking everything after the word "false", all of line 21, and the word "identification" on line 22. Senator O'Hara recommended that the bill DO PASS AS AMENDED, and his motion carried unanimously.

DISPOSITION OF SENATE BILL 45:

Senator Crippen recommended that the bill DO NOT PASS, and the motion carried unanimously.

Nick Anderson

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date _____

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

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STANDING COMMITTEE REPORT

January 19 19 87

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration Senate Bill No. 83

Respectfully report as follows: That Senate Bill No. 83

be amended as follows:

1. Page 1, lines 20 through 22.
Following: "false"
Strike: "or not current as to name, address, place of employment, or other items of identification"

XXXXXX
DO PASS
And, as so amended,
DO PASS

B.A.

Chairman.

STATE PUB. CO.
Helena, Mont.

however, large items have been lost. Recently, a $500 piece of engine removing equipment was rented and never returned. The borrower was traced to be in New York. The company is out of the equipment and has suffered the loss.

There were no further proponents.

There were no opponents.

REP. KEEDY questioned about theft. SENATOR MAZUREK replied it is difficult to prove that theft was the intent.

REP. KEEDY stated written notice containing the date and time is an element of defense, why? SENATOR MAZUREK replied the purpose is to insure that the defendant has knowledge of the time the equipment is to be returned. If it is not in bold print it is not right.

REP. EUDAILY asked if the penalties are in line with the bad check penalties. It was replied no, there are in line with the theft statute.

REP. KEEDY asked about page 1, line 12 purposely and knowingly. SENATOR MAZUREK replied that was at the request of Senator Towe. The concern expressed was if someone could knowingly not return the property. He may not have intended to return it or it may have been stolen from him, or he may have been hospitalized. If he were unable to return it knowingly alone could result in prosecution and conviction; knowingly and purposely would not.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 9:25 a.m.

SENATE BILL 38 REP. SEIFERT moved do pass.

REP. YARDLEY agreed with the motion as it makes it a much more simplified probate law.

The motion carried unanimously.

SENATE BILL 43 REP. CONN moved do pass.

REP. CURTISS thought this was a radical change for one court case. There is a possibility it could be overturned. It was replied that type of case has appeared before the Supreme Court.

The motion of do pass carried with REP. HANNAH voting no.

codify the procedure that the legislature and the supreme court work together.

There were no further proponents.

There were no opponents.

REP. YARDLEY asked if this case was a 1968 case as shown in the exhibit. If it is, why was there such a time lag? The sponsor replied that was a typographical error and it was actually a 1979 case.

That ended the discussion on Senate Bill 63.

SENATE BILL 83 SENATOR MAZUREK, sponsor, stated this bill establishes the crime of failure to return rented personal property. Individuals who operate rental centers rent out all types of equipment from ladders to large expensive equipment. There are experiencing escalating loss with the equipment when it is not returned. The county attorneys have difficulty prosecuting the borrower when merchandise is not returned. It is not possible to charge them under the theft statute because it was not actually theft since an agreement was signed. Because of that difficulty, the only statute available to the county attorney is theft of service, which is a misdemeanor. Someone may rent a $1,000 piece of equipment and be charged with a misdemeanor if it is not returned.

On the contract a notice of return must be indicated in bold print on the agreement. If the person fails to return the equipment, a certified letter is sent indicating he has 48 hours to return the equipment. It is similar to the bad check language.

The offense must be committed purposely and knowingly.

J. C. WEINGARTNER, Montana Rental Association, supports the bill. It is a big problem and this is a way to protect the small businessman. This bill is also protecting the person who forgets to bring the merchandise back by sending them a certified letter.

TOM HONZEL, County Attorneys, supports the bill. The problem the attorneys have is proving the intent of the person to keep the merchandise. This would clarify the situation.

KEN PETERSON stated 10 years ago there were only eight rental agencies in the state. Today there are about 30. It is not the intent of the agencies to sue over a fifty-cent screwdriver,

SENATE BILL 63 REP. SEIFERT moved do pass.

The motion carried unanimously.

SENATE BILL 75 REP. BROWN moved do pass.

The motion carried unanimously.

SENATE BILL 83 REP. SEIFERT moved do pass.

REP. SEIFERT moved to amend line 12, page 1 following "purposely" strike "and" and insert "or". The motion failed.

REP. HANNAH moved the bill have an immediate effective date on passage and approval. The motion carried unanimously.

REP. SEIFERT moved do pass as amended. The motion carried with REP. EUDAILY against the motion.

SENATE BILL 36 REP. SEIFERT moved do pass.

REP. SEIFERT moved the amendments be incorporated with the bill. EXHIBIT 3. The motion carried.

REP. SEIFERT moved do pass as amended. The motion carried unanimously.

The meeting adjourned at 10:20 a.m.

KERRY KEYSER, CHAIRMAN

mr

REP. KEEDY felt there was no need for the bill. If inflation goes up the amount of the estate will increase. REP. IVERSON stated there would only be an increase of approximately $75.

REP. DAILY stated the public administrator in Butte also works in another capacity. The public administrator only receives the fee for the estate, no salary is given.

The motion of do pass carried with EUDAILY, YARDLEY and KEEDY opposing the motion.

SENATE BILL 342 REP. KEEDY moved do pass. The motion carried with CURTISS and DAILY voting no.

SENATE BILL 83 REP. BROWN moved do pass.

It was mentioned that the bill was passed earlier by the committee and returned by the House Floor. An immediate effective date was amended to the bill.

REP. KEEDY disagreed with the do pass motion. This offense is already in the criminal statutes as theft. It is special legislation that addresses a narrow section of the community. The date and time that it must be returned is designated on the contract. In bold print it states a penalty is assessed if it is not returned. It creates a presumption of guilt if there is false identification or failure to return the merchandise.

REP. CONN stated there are warnings on machines stating if it is broken into the person will be prosecuted. It is not unusual to have this stated. REP. KEEDY responded if a store does not have a shoplifter warning sign that does not mean you can shoplife in that store and not be prosecuted.

The motion of do pass as amended carried with KEEDY voting no.

The meeting adjourned at 9:35 a.m.

Kerry Keyser Chairman

KERRY KEYSER, CHAIRMAN

mr